

DEED RIDER

COVENANT FOR AFFORDABLE HOUSING

DOCUMENT #5610
ADOPTED 12/22/93PRELIMINARY STATEMENT

The purpose of this covenant is to provide a uniform plan for administration and enforcement of covenants and restrictions imposed upon real property by the City of Boston and the Boston Redevelopment Authority for the purpose of regulating the development of real property for housing for persons of low and moderate income. Such covenants and restrictions arise as a result of urban renewal, disposition of land, and the granting of public benefits or relief from regulation. Such covenants and restrictions constitute a portion of the consideration to be paid for such real property or public benefit or relief from regulation. This covenant is imposed to promote the public health, safety, convenience and welfare by preventing overcrowding and deterioration of existing housing and by encouraging expansion of the City of Boston's housing stock; to provide for a full range of housing choices for all incomes, ages, and family sizes; to mitigate the impacts of market rate housing on the supply and costs of housing for low and moderate income households; to relieve the burden on City of Boston and the Boston Redevelopment Authority to use other land for housing low and moderate income persons; to fulfill obligations under statutes and regulations for urban redevelopment and other public purposes; to increase the production of housing units affordable to low and moderate income households and to expand the supply of housing to meet existing and anticipated employment needs within the City of Boston.

NOW, THEREFORE, as consideration from the Owner to the Authority for the conveyance of the Premises, the Owner, for itself, its heirs, successors and assigns, hereby covenants and agrees that the Premises shall be subject to the following agreements, covenants and restrictions which are hereby imposed for the benefit of, and shall be enforceable by, the Developer's agent and designee, the Authority, or its successors, assigns, agents and designees.

1. Definitions. In this Covenant, the following words and phrases shall have the meanings indicated:

"Affordable Unit" means a dwelling unit designated as provided herein and subject to this Covenant;

"Authority" means the Boston Redevelopment Authority or the City of Boston acting by and through its Public Facilities Commission as may be specified in the Deed, its successors, assigns, agents and designees;

"Covenant" means this document and all of its provisions including, without limitation, all affirmative covenants, restrictive covenants and options contained herein;

"Deed" means the deed or other instrument between the Authority and the Owner recorded with Suffolk Registry of Deeds and which subjects the Premises to this Covenant;

"Developer" means

"Household" means all persons who reside or intend to reside together at the Premises;

"Maximum Resale Price" means the maximum price permitted for the sale of an Affordable Unit, as set forth in Section 3;

"Option" means the option to purchase set forth in Section 10 of this Covenant;

"Owner" means the person(s) or entity identified in the Deed and any heir, successor or assign holding an interest in an Affordable Unit;

"Premises" means the land conveyed by or described in the Deed recorded herewith together with any improvements now or hereafter erected thereon.

2. Identification of Affordable Units. All dwelling units now or hereafter situated on the Premises shall be Affordable Units subject to the covenants, restrictions and options set forth in this Covenant unless and until a certificate signed by the Owner and the Authority is recorded in the Suffolk Registry of Deeds identifying particular units as Affordable Units and specifying for each Affordable Unit the initial sale price. After the recording of said certificate, this Covenant shall cease to apply to the dwelling units not identified as Affordable Units.

3. Covenant; Maximum Resale Price. An Affordable Unit shall not be sold, conveyed, assigned or otherwise disposed of, for consideration in excess of the Maximum Resale Price as defined below. Consideration shall include the aggregate value of all money, property and services of every kind given or paid by the purchaser to or for the benefit of the Owner in connection with the transfer of an Affordable Unit, including any consideration paid for any other real property or personal property conveyed by the Owner to the purchaser.

The "Maximum Resale Price" for an Affordable Unit as of a given date shall be the sum of:

- a) the maximum price for the Affordable Unit specified in the Deed, increased five percent (5%) per annum, compounded annually;
- b) plus the actual cost of bedrooms added to the Affordable Unit;
- c) plus the actual cost of bathrooms added to an Affordable Unit containing three or more bedrooms;
- d) plus the actual cost of other capital improvements made to the Affordable Unit, provided that, such amount shall not exceed one percent, per year, of the price paid for the Affordable Unit, by Owner from time to time;
- e) plus the amount incurred by the Owner for the services of a real estate agent, up to an amount not greater than six percent (6%) of the sum of (a) through (d) above, and provided that such expense is documented.

The cost of capital improvements shall be included in the Maximum Resale Price only if, (i) the improvement is considered to be a "capital" improvement within the definition of the Internal Revenue Code; (ii) the improvements complied with all pertinent statutes, ordinances and regulations at the time such improvements were made, and (iii) the cost of such improvement has been documented at the time of resale.

4. Covenant; Owner-Occupancy. An Affordable Unit shall be occupied as an Owner's principal residence. An Affordable Unit may not be leased, subleased or occupied on a rental basis except that an Owner may lease an Affordable Unit for a single period, not to exceed six months, provided that the rent paid by the lessee is not greater than one hundred fifteen percent (115%) of the Owner's then current monthly housing costs. Housing costs shall be defined as mortgage principal and interest payments, mortgage insurance and property insurance premiums, real estate taxes, water and sewer charges, condominium fees, and utilities if included in the rent. In no other circumstance shall an Owner lease an Affordable Unit without cause and the prior written consent of the Authority.

5. Certificate of Authority as to Maximum Resale Price. Upon written application and upon submission of such evidence as the Authority may require, the Authority shall furnish to any Owner, mortgagee or person having a security interest in an Affordable Unit, a certificate in recordable form stating the Maximum Resale Price for the Affordable Unit and itemizing the amount calculated in accordance with Section 3 to be the value of capital improvements made to the Affordable Unit. Such certificate shall be valid for the period stated in the certificate.

6. Certificate of Compliance. No conveyance, sale or transfer shall be valid and be deemed in accordance with the terms of this Covenant unless a certificate, or certificates, is obtained and recorded, signed and acknowledged by the Authority which refers to the Affordable Unit, the Owner thereof, and the Maximum Resale Price therefor, and stating that the proposed conveyance, sale or transfer is in compliance with this Covenant.

7. Conclusive Evidence of Compliance with this Covenant. Certificates of the Authority may be relied upon as follows:

a) A mortgagee of an Affordable Unit may conclusively rely upon:

- 1) a certificate issued by the Authority pursuant to Section 5 as to the Maximum Resale Price of an Affordable Unit, provided that such Maximum Resale Price is not exceeded by the consideration for the Affordable Unit stated in the recorded deed to

the mortgagor and further provided that such certificate of Maximum Resale Price is recorded in the Suffolk Registry of Deeds; and

ii) an affidavit of the mortgagor of an Affordable Unit that the mortgagor's Household occupies the Affordable Unit as his or her or their principal residence (or intend to so occupy in the case of a purchase money mortgage).

b) An Owner of an Affordable Unit shall not be subject to any remedy of specific performance or other penalty arising out of events prior to his or her purchase of the Affordable Unit, provided that such purchaser has complied with the Maximum Resale Price and actual occupancy requirements of this Covenant.

c) This Section shall not limit the right of persons to rely upon other certificates of the Authority.

d) All references to a person shall include all other persons claiming an interest in the Affordable Unit by, through or under such person.

8. Covenant; Compliance. The Owner of an Affordable Unit shall furnish such information about the Affordable Unit as the Authority may request from time to time on the identity of the Owner, the identity of any mortgagee or other person having an interest in the Affordable Unit, the consideration paid for the Affordable Unit, the condition of the Affordable Unit, the identity of the occupants, and any other information which the Authority deems relevant, all for the purpose of assuring compliance with this Covenant. The Authority shall have access to inspect the Affordable Unit at reasonable times and on reasonable notice.

9. Rights of Mortgagees. Other provisions of this Covenant notwithstanding, a financial institution may hold a mortgage or security interest in an Affordable Unit and may acquire title to an Affordable Unit by foreclosure or instrument in lieu of foreclosure; upon either such acquisition, the covenants, restrictions and options contained in this Covenant shall terminate and have

no further effect provided that (a) upon receipt by the Authority of notice in any form, including notice by newspaper publication, of an impending foreclosure against an Affordable Unit, the mortgagee shall allow the Authority the opportunity to cure such default within thirty (30) days of receipt of such notice or to exercise its option in accordance with the terms and conditions set forth herein and (b) that the principal amount secured by such mortgage or security interest did not exceed ninety-five percent (95%) of the Maximum Resale Price calculated according to Section 3 at the time of the granting of the mortgage or security interest.

Further, the lender shall notify the Authority in the event of any default for which the lender intends to commence foreclosure proceedings but no default failure to notify the Authority shall impair the validity of foreclosure. Said notice shall be sent to the Authority as set forth in Section 16 of this Agreement.

Further, provided that if any person who was an owner of an Affordable Unit prior to foreclosure acquires an interest in such Affordable Unit after foreclosure, then all covenants and options contained herein shall apply to all subsequent occupancy, rental and sale of the Affordable Unit.

Further provided, that in consideration of the release of this Covenant, in the event of such foreclosure or transfer in lieu of foreclosure and if an Affordable Unit is sold to a third party, all proceeds of the sale shall be applied as follows: first, to the lender to pay all sums owing to lender; second, to any public or institutional lender, in the order of their respective priority, to pay all sums owing to said lenders, including the Authority; and the balance, if any, to the Owner.

10. Option. The Authority reserves or the Owner grants to the Authority, as the case may be, the right and option to purchase an Affordable Unit upon one or more of the following events:

- a) The Owner has delivered a written notice of intent to sell to the Authority, which notice is a requirement of this Covenant and shall be a condition precedent to any conveyance of an Affordable Unit or any interest therein;

- b) Any legal or beneficial interest in an Affordable Unit is conveyed without notice to the Authority as provided above, unless the Authority shall have waived its Option with respect to a particular sale; or
- c) Any legal or beneficial interest in an Affordable Unit is conveyed for consideration in excess of the Maximum Resale Price; or
- d) The Premises are leased upon terms not complying with Section 4 of this Covenant; or
- e) Receipt by the Authority of notice in any form (including notice by newspaper publication) of an impending foreclosure against an Affordable Unit; or
- f) Receipt by the Authority of notice in any form (including notice by newspaper publication) of the taking of an Affordable Unit for unpaid taxes.

11. Term of the Option. The right of the Authority to exercise its Option pursuant to the preceding section shall terminate on the earlier of the following: (a) fifty (50) years from the date of the Deed; or (b) twenty-one (21) years following the death of the last survivor among the following named persons: (i) Harry, Prince of Wales; (ii) Rose Kennedy Schlossberg; and (iii) John F. Kennedy, Jr.

12. Option Price. The agreed purchase price of an Affordable Unit upon the exercise by the Authority of the Option is the lesser of the Maximum Resale Price or the fair market value. Fair market value may be determined at the Authority's discretion and shall be established according to an independent appraisal. In the event that an Owner has sent notice pursuant to Section 10(a) the price shall be set forth in a Certificate of Agreement executed in a timely manner by both the Authority and the Owner. If such Owner disputes the validity of the price then the Owner and the Authority shall select a third party arbitrator to determine such value and each shall pay one-half of the costs of the arbitration. The decision of the arbitrator shall be binding upon both parties and the Owner and the Authority shall execute a Certificate of Agreement consistent with such decision.

13. Exercise of Option. If the Authority wishes to exercise the Option, the Authority shall do so by giving written notice to the Owner.

In the event that the Authority is exercising its Option pursuant to the Owner's notice of intent to sell, as set forth in Section 10(a) of this Covenant, then the Authority's notice of its intent to exercise the Option shall be given within ten (10) business days of executing the Certificate of Agreement. Further, within sixty (60) days such notice by the Authority, the Authority and Owner shall execute a Purchase and Sale Agreement consistent with the terms of this Covenant and providing for a deposit.

The Premises are to be conveyed by a good and sufficient quitclaim deed running to the Authority or its designee, conveying a good and clear record and marketable title thereto, free from encumbrances, except such taxes for the then current year as are not due and payable on the date for the delivery of such deed; such matters of record as were of record immediately prior to the recording of the Deed; and such encumbrances as to which the Authority may have given its express written consent. The Premises shall be delivered in the same condition as at the time the Authority exercises the Option, free of all tenants and occupants. The Authority shall be entitled to an inspection of the Premises prior to delivery of the deed in order to determine whether the condition thereof complies with the terms of this paragraph. Rents, fuel, common condominium charges, and water and sewer use charges, if applicable, and current real estate taxes shall be adjusted as of the date of delivery of the Deed. If the amount of such real estate taxes is not known at the time of delivery of the Deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

If Owner shall be unable on the closing date to give title or to make conveyance or to deliver possession of the Premises, all in accordance with the terms hereof, or if on the closing date the Premises do not conform with the requirements hereof, then the date of the closing hereunder shall be postponed for a period of thirty (30) days during which period the Owner shall use reasonable good faith efforts to remove any defects in title or to make conveyance or deliver possession of the Premises, all in accordance with the terms hereof or to make the Premises conform with the requirements hereof, as

the case may be. The purchase price to be paid by the Authority to the Owner shall be reduced by any amount paid by the Authority to persons holding mortgages or other liens against the Premises.

If after the expiration of the aforesaid time for the closing, any title defects shall not have been removed and conveyance not made and possession delivered, or the Premises do not conform, all is required hereunder, then the Authority may without waiving any claims against the Owner, either (a) terminate the Authority's obligation to purchase the Premises pursuant to its exercise of the Option, or (b) accept such title as Owner can deliver to the Premises in their then condition and to pay therefor the purchase price; provided that in the event of such conveyance in accordance with this paragraph, if the Premises shall have been damaged by fire or casualty insured against, or taken in whole or in part by eminent domain, then Owner shall, unless Owner has previously restored the Premises to their former condition either: (a) pay over or assign to Authority, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or award for taking, less any amounts reasonably expended by Owner for any partial restoration; or (b) if a holder of a mortgage on the Premises (to the extent such holder has an interest in the proceeds or award) shall not permit the insurance proceeds or award or any part thereof to be used to restore the Premises to their former condition or to be so paid over or assigned, give Authority a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by Owner for any partial restoration.

Nothing contained herein as to Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Premises in accordance with the terms hereof, as to use of proceeds to clear title or as to the Authority's election to take title, nor anything else in this Covenant: shall be deemed to waive, impair or otherwise affect the priority of the Option over matters appearing of record, or occurring, at any time after the recording of this Covenant, all such matters so appearing or occurring being subject and subordinate in all events to the Option.

14. Failure to Exercise Option. In the event that the Authority shall fail to give such notice of election to exercise the Option within the time above

specified or in the event:that the Authority shall, after giving such notice, fail to complete such purchase as hereinabove provided, then the Owner shall be free thereafter to sell and convey the Premises subject:to the restrictions set forth in this Covenant.

Furthermore, Owner shall be entitled to a certificate, in recordable form and on demand, executed by the Authority, that it elects not to exercise the Option. If the Authority provides such a certificate, it shall be recorded with the deed from the Owner and then such certificate shall be conclusive evidence of compliance with the requirements of this instrument:with respect: to Section 11.

15. Proceeds from Casualty or Taking or Abandonment:of Condominium Regime. If an Affordable Unit is destroyed by fire or other casualty and not:rebuilt, or if it is taken by eminent:domain, or if an Affordable Unit ceases to be a separate ownership unit by reason of abandonment of a condominium regime followed by a sale of the entire building with the proceeds of sale being distributed to the former unit owners, then all proceeds of insurance or condemnation award or sale in excess of the Maximum Resale Price shall be the property of the Authority as compensation for the loss of the benefit of this Covenant.

16. Notice. Any notice or other communication required or permitted to be given under this Covenant:must be in writing and shall be effective when received by the party to whom it is addressed or four (4) business days after mailing by registered or certified mail, return receipt requested, whichever first:occurs. Notices and communications to the Authority shall be sent:to: Boston Redevelopment Authority, One City Hall Square, Boston, MA 02201, Attention: Director, or the Agent: Notices and other communications to the Owner shall be sent to the address stated in the Deed as the Owner's address or to the address of the Owner of the Affordable Unit as shown on the tax assessment:roll of the City of Boston. Either party by written notice to the other may designate a different:address to which notices shall thereafter be sent.

17. Covenants to Run with the Land. It is intended and agreed that:the agreements, covenants and restrictions set forth in this Covenant:shall run with the land constituting the Premises and shall be binding upon the Owner, its successors and assigns, for the benefit of and shall be enforceable by the

Authority and its successors and assigns, for a period of thirty (30) years from the date of the Deed, unless a notice of restriction is recorded by the Authority or its successors and assigns before the expiration of thirty (30) years from the date of the Deed in which case such agreements, covenants and restrictions shall continue for twenty (20) years from the date of recording such notice of restriction. It is further agreed that the reservation or grant of the agreements, covenants and restrictions contained herein are for public and charitable purposes.

An Owner shall include a reference to this Covenant in any and all deeds or other instruments conveying an interest in an Affordable Unit or any part thereof.

18. Appointment of Agent: The Authority may from time to time appoint and revoke the appointment of one or more agents who shall have the power to issue certificates as provided herein and to exercise and enforce the rights of the Authority as provided herein. Such appointments shall be made and revoked only by instrument in writing recorded in the Suffolk Registry of Deeds and each such action shall be effective only upon recording. No such instrument of appointment or revocation of appointment shall be effective unless it expressly refers to this Covenant.

19. Enforcement: Without limitation on any other rights or remedies of the Authority, its successors and assigns, in the event of any rental or occupancy or sale or other transfer or conveyance of an Affordable Unit in violation of the provisions of this Covenant, the Authority shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- a) specific performance of the provisions of this Covenant;
- b) voiding of the rental arrangement that violates this Covenant;
- c) money damages for charges in excess of maximum rents or maximum resale prices;
- d) money damages for the cost of creating or obtaining other comparable dwelling units to fulfill the need for affordable housing by

low income and moderate income households;

- e) if the violation is a sale of an Affordable Unit at a price greater than the Maximum Resale Price as provided herein, the Authority shall have the option to purchase the Affordable Unit on the same terms and conditions as provided herein for the exercise of its option to purchase, except that the purchase price shall be the price paid in a conveyance that would have complied with the provisions of this Covenant;
- f) exercise of statutory power of sale pursuant to the mortgage recorded herewith; and
- g) any contract for sale or any sale or other transfer or conveyance of an Affordable Unit in violation of the provisions of this Covenant in the absence of a certificate from the Authority approving such sale, transfer or conveyance as provided in Paragraph 5, to the maximum extent permitted by law shall be voidable by the Authority by suit in equity to enforce such agreements, covenants and restrictions.

If any action is brought to enforce this Covenant, the prevailing party shall be entitled to actual attorneys fees and other costs of bringing the action, in addition to any other relief or remedy to which such party may be entitled.

The Owner hereby grants to the Authority the right to enter upon the Premises for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the Affordable Unit which the Authority may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the agreements, covenants and restrictions.

20. Third Party Beneficiaries. The Covenant as to Maximum Resale Price may be enforced by any Owner and/or prospective purchaser of an Affordable Unit.

21. Waiver. Nothing contained herein shall limit the rights of the Authority to release or waive, from time to time, in whole or in part; any of the restrictions contained herein with respect to an Affordable Unit; no waiver or release shall be effective unless it is in writing and executed by the Authority.

22. Captions Not Binding. Captions for sections have been inserted for convenient reference and are not to be construed to limit or modify the provisions of this Covenant:

23. Severability. If any provision of this Covenant or the application thereof to any person or circumstance is held to be invalid or unenforceable by any decision of any court of competent jurisdiction in an action in which the Authority is a party, such decision shall not impair or otherwise affect any other provision of this Covenant; or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

24. Assignment: The Authority retains the right to assign its interest in this Covenant to the City of Boston.

WITNESS our hands and seals this ____ day of _____, 198_.

DEVELOPER:

BY:

Its

OWNER:

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk ss.

, 1988.

Then personally appeared before me the above-named _____ and
acknowledged the foregoing to be his/her free act and deed before me.

Notary Public
My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk ss.

, 1988.

Then personally appeared before me the above-named _____ and
acknowledged the foregoing to be his/her free act and deed before me.

Notary Public
My Commission Expires:

EXHIBIT B

BOSTON REDEVELOPMENT AUTHORITY

COVENANT FOR AFFORDABLE HOUSING

2. Definitions. In this covenant, the following words and phrases shall have the meanings indicated, unless the context requires otherwise:

"Affordable Unit" means a dwelling unit designated as provided herein and subject to this Covenant;

"Annual household income" means the sum of the adjusted gross income as defined in then-applicable provisions of the U.S. Internal Revenue Code of each member of the household for the two calendar years next preceding such date divided by two;

"Authority" means Boston Redevelopment Authority or such other person or agency as may be specified in the Deed;

"Consumer Price Index" means the Consumer Price Index published by the U.S. Department of Labor Bureau of Labor Statistics for the Boston standard metropolitan statistical area. The Consumer Price Index for any date shall be the index published for the first day of the current calendar quarter; the calendar quarters are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. If the federal government discontinues the publication of the Consumer Price Index, then the Authority shall designate another measure of price inflation;

"Covenant" or "this covenant" means this document and all of its provisions including, without limitation, all affirmative covenants, restrictive covenants and options contained herein;

"Deed" means the deed, grant or other instrument conveying or granting an interest in the premises, and incorporating this covenant by reference;

"Household" means the tenant or purchaser of an Affordable Unit and any person who will reside in the Unit with the tenant or purchaser;

"Low income" means total household income not exceeding 50% of the median income of households in the Boston region;

"Maximum resale price" means the maximum price permitted for the sale of an Affordable Unit, as set forth in Section ____;

"Median income" means the household income set forth in or calculated by regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. For a studio or one bedroom dwelling unit, "median income" shall be the median for households of two persons; for a two bedroom dwelling, the median income for households of four persons; for three bedroom dwellings, the median income for households of six persons; for four bedroom dwellings, the median income for households of eight persons; and for dwellings having five or more bedrooms, the median income for households of ten or more persons. If the Department of Housing and Urban Development discontinues publication of median income statistics, then the Authority shall designate another measure of household income;

"Moderate income" means total household income not exceeding 80% of the median income of households in the Boston region;

"Mortgage Interest Rate Index" means the interest rate quoted by the Federal National Mortgage Association for purchasing mortgages on single family homes, for mortgages with loan to value ratios of 80% or less, fixed interest rate. The Mortgage Interest Rate Index for any date shall be the index published for the first day of the current calendar quarter; the calendar quarters are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. If the Federal National Mortgage Association discontinues the publication of the interest rate quotations for such loans, then the Authority shall designate another measure of mortgage interest rates;

"Owner" means the person or entity identified in the Deed and any successor or assign holding an interest in an Affordable Unit;

"Premises" means the land and any improvements now or hereafter erected thereon conveyed by or described in the Deed;

"Upper-moderate income" means total household income not exceeding 120% of the median income of households in the Boston region.

3. Covenant; Construction and Designation of Affordable Units The premises shall be improved with one or more dwelling units of which not fewer than the number of dwelling units specified in the deed shall be Affordable Units. Affordable Units shall be comparable in design, floor area, bedroom mix, services and amenities to all other dwelling units in the premises. Affordable Units shall be constructed simultaneously with other units in the premises. Comparable parking shall be provided for Affordable Units, the cost of which shall be deemed included in the maximum rental or sale price of the unit as provided herein, regardless of whether such parking would be subject to separate cost or charge if rented or sold to other unit owners or occupants. Before the occupancy of any portion of the premises, the Owner shall record a written instrument (and plan if needed) signed by both the Owner and the Authority, identifying the dwelling units that satisfy the Owner's obligation to provide Affordable Units; until such instrument of designation is recorded in the Suffolk Registry of Deeds, all dwelling units in the premises shall be Affordable Units restricted as provided herein.

4. Covenant; Occupancy. No Affordable Unit may be occupied or used except by a person or household that:

- (a) has income no higher than moderate income on the date of first occupancy of the Affordable Unit; and
- (b) occupies the Affordable Unit as his or her or their primary residence, except that, upon petition, the Authority may approve the rental of the Affordable Unit based upon the Owner's or occupant's temporary need to relocate.

5. Covenant; Rental Units. Each Affordable Unit if used as a rental accommodation shall have a monthly rent no higher than [two and a half (?)] percent of median income if the rent includes heat and [two (?)] percent of median income if the rent does not include heat.

6. Covenant; Condominium and Cooperative Units. If the premises are made subject to a condominium or cooperative plan, then the following restrictions shall apply:

- (a) Each Affordable Unit must be established as a separate condominium unit or cooperative unit;
- (b) No such unit may be sold or conveyed during the term of this covenant except to a person or household who on the date of sale or conveyance is of low income or

moderate income and who undertakes to occupy the unit as his or her or their primary residence.

- (c) No Affordable Unit or interest therein shall at any time be sold, conveyed or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Affordable Unit for and in connection with the transfer of such Affordable Unit (including the consideration paid for any other real property or personal property conveyed) is equal to or less than the maximum resale price for such Unit. The "maximum resale price" for any Unit as of a given date shall be the lesser of:
- (1) the maximum price for the Unit specified in the Deed increased five per cent per annum, compounded annually, plus the value of capital improvements made to the Unit; or
 - (2) the maximum price for the Unit specified in the Deed increased to reflect the change in the cost of living index (This price is calculated by multiplying the maximum price specified in the Deed by a fraction, the numerator of which is the Consumer Price Index applicable on the date of conveyance and the denominator of which is the Consumer Price Index applicable on the date of the Deed), plus the value of capital improvements made to the Unit.
- (d) For purposes of calculating the maximum resale price, the "value of capital improvements made to the Unit" means [INSERT DEFINITION].
- (e) Every Unit deed or certificate for stock in a cooperative unit conveying an interest in an Affordable Unit shall contain a statement that such Unit is an Affordable Unit subject to the provisions hereof, and shall include a reference to the place of recording of this Covenant in the Suffolk Registry of Deeds.

7. Adjustment to Income Levels during Period of High Interest Rates. During any period when the Mortgage Interest Rate Index exceeds _____ (BEING CALCULATED) percent, the income level for a purchaser of an Affordable Unit as a condominium or cooperative apartment shall be increased as provided in this section. The maximum income level otherwise applicable shall be multiplied by a fraction, the numerator of which is the then

applicable Mortgage Interest Rate Index, and the denominator of which is
_____ (BEING CALCULATED).

8. Ownership by Certain Non-Profit Organizations. Any other provision of this covenant notwithstanding, an Affordable Unit may be conveyed to a non-profit organization or government agency that will hold the Unit for occupancy by households having an eligible income level; provided, that such non-profit organization or government agency is approved by the Authority, which approval may be withheld with or without cause by the Authority in its sole discretion.

9. Covenant, Compliance. The owner and occupants of an Affordable Unit shall furnish such information about the Affordable Unit as the Authority may request from time to time on the identity of the Owner, the identity of any mortgagee or other person having an interest in the Unit, the consideration paid for the Unit, the condition of the Unit, the identity of the occupants, and the household income of the occupants, all for the purpose of assuring compliance with this covenant. The Authority shall have access to inspect the Affordable Unit at reasonable times and on reasonable notice.

10. Certificate from Authority. Upon written application, the Authority shall furnish to the Owner, occupant, purchaser or other interested party, one or more certificates in recordable form stating:

- (1) whether a particular person or household qualifies under this covenant as to income limitations for ownership or occupancy of an Affordable Unit;
- (2) in the event the Redeveloper, his successors and assigns, is unable after diligent effort (i.e., six months after construction) to find a buyer for the Affordable Unit(s) in accordance with this covenant, then the Redeveloper may sell to those persons with income higher than 80% of median income by cooperating with the Authority in establishing an eligible list by expanding the medium income percentage on a progressive basis of 1% until such time as all units are sold;
- (3) whether the terms of any sale or proposed sale of an Affordable Unit that is a condominium or cooperative unit comply with the terms of this covenant;
- (4) whether the Authority waived its option to purchase following any particular event; and
- (5) whether the Authority has any notice of a breach of this covenant.

All requests to the Authority for such certificates must be in writing and upon application forms to be prescribed from time to time by the Authority; and shall include such evidence as to income or other facts as the Authority may require. The Authority shall issue such a certificate within 30 days from the date of receipt of a proper and complete application. Any third party not having actual knowledge of contrary facts may

conclusively rely upon any such certificate of the Authority as to the matters stated in such certificate.

11. Rights of First Mortgagee. Other provisions of this covenant notwithstanding, a financial institution that holds a first mortgage or security interest in the premises or in an Affordable Unit may acquire title to the premises or Affordable Unit by foreclosure or instrument in lieu of foreclosure, provided that all covenants and options contained herein shall apply to all subsequent occupancy, rental and sale of the premises and Affordable Unit.

12. Option. The Authority reserves or the Owner grants to Authority, as the case may be, the right and option to purchase any Affordable Unit which is a cooperative or condominium unit, at any time after one or more of the following events:

- (1) Any legal or beneficial interest in the Affordable Unit is conveyed by the Owner without the Owner's first having obtained the prior written approval of the Authority; or
- (2) Receipt by the Authority of notice in any form (including notice by newspaper publication) of an impending foreclosure against all or any part of the Affordable Unit; or
- (3) Receipt by the Authority of notice in any form (including notice by newspaper publication) of the taking of the property for unpaid taxes; or
- (4) Commencement of voluntary or involuntary proceedings against the Owner under any bankruptcy or insolvency law, or the appointment of a receiver for the benefit of the Owner's creditors.

13. Term of Option. The Option may be exercised at any time during the year which commences on the earlier of the following (a) fifty (50) years from December 1, 1983; or (b) twenty-one (21) years following the death of the last survivor among the following named persons:

[INSERT LIST]

14. Exercise of Option. If Authority wishes to exercise the option, Authority shall do so by giving notice of exercise.

The Premises are to be conveyed by a good and sufficient quitclaim deed running to Authority or its nominee, conveying a good and clear record and marketable title thereto, free from all encumbrances, except such taxes for the then current year as are not due and payable on the date for the delivery of such deed; such matters of record as are of record immediately prior to the recording of the deed; and such encumbrances as to which the Authority may have given its express written consent. The Premises shall be delivered in the same condition as at the time Authority exercises the Option, free of all tenants and occupants. Rents, fuel, common condominium or cooperative charges, and water and sewer use charges, if applicable, and current real estate taxes shall be adjusted as of the date of delivery of the deed. If the amount of such real estate taxes is not known at the time of delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained. The closing resulting from the exercise of the Option shall take place and the deed shall be delivered at the office of the Authority at 10:00 a.m. on the fourth Thursday following the postmark date of Authority's notice of such exercise of Option, unless otherwise agreed in writing. If Owner shall be unable on the Closing Date to give title or to make conveyance or to deliver possession of the Premises, all in accordance with the terms hereof, or if on the Closing Date the Premises do not conform with the requirements hereof, then the date of the closing hereunder shall be postponed for a period of thirty (30) days during which period Owner shall use reasonable good faith efforts to remove any defects in title or to make conveyance or deliver possession of the Premises, all in accordance with the terms hereof or to make the Premises conform to the requirements hereof, as the case may be. The payment of any portion of the purchase money by Authority to persons holding mortgages or other liens shall, to the extent thereof, be as complete a discharge of Authority as if paid directly to Owner. If after the expiration of the aforesaid time for the closing, any title defects shall not have been removed and conveyance not made, and possession delivered, or the Premises do not conform, all as required hereunder, then the Authority may without waiving any claims against Owner, either (a) terminate Authority's obligation to purchase the Premises pursuant to its exercise of the Option, or (b) accept such title as Owner can deliver to the Premises in their then condition and to pay therefor the purchase price; provided that in the event of such conveyance in accordance with this paragraph, if the Premises shall have been damaged by fire or casualty insured against, or taken in whole or in part by eminent domain, then Owner shall, unless Owner has previously restored the Premises to their former condition either: (a) pay over or assign to Authority, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or award for taking, less any amounts reasonably expended by Owner for any partial restoration; or (b) if a holder

of a mortgage on the Premises (to the extent such holder has an interest in the proceeds or award) shall not permit the insurance proceeds or award or any part thereof to be used to restore the Premises to their former condition or to be so paid over or assigned give Authority a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by Owner for any partial restoration. Nothing contained herein as to Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Premises in accordance with the terms hereof, as to use of proceeds to clear title or as to Authority's election to take title, nor anything else in this deed, shall be deemed to waive, impair or otherwise affect the priority of Authority's Option over matters appearing of record, or occurring, at any time after the recording of this deed, all such matters so appearing or occurring being subject and subordinate in all events to the Option.

15. Option Price. The agreed purchase price for Affordable Unit upon the exercise by the Authority of its option to purchase is the maximum resale price for the Unit as defined in this covenant.

16. Proceeds from Casualty or Taking or Abandonment of Condominium Regime. If an Affordable Unit is destroyed by fire or other casualty and not rebuilt, or if it is taken by eminent domain, or if and Affordable Unit ceases to be a separate ownership unit by reason of abandonment of a condominium regime or cooperative plan followed by a sale of the entire building with the proceeds of sale being distributed to the former unit owners, then all proceeds of insurance or condemnation award or sale in excess of the maximum resale price shall be the property of the Authority as compensation for the loss of the benefit of this covenant.

17. Notice. Any notice or other communication required or permitted to be given under this covenant must be in writing and shall effective when received by the party to whom it is addressed or four business days after mailing by registered or certified mail return receipt requested. Notices and communications to the Authority shall be sent to the Authority at City Hall, Boston, Massachusetts 02113, Attention: Affordable Housing Plan Administrator, or to the Agent. Notices and other communications to the Owner shall be sent to the address stated in the deed as the Owner's address or to the address of the owner of the premises as shown on the tax assessment roll of the City of Boston. Either party by notice to the other may designate a different address to which notices shall thereafter be sent.

18. Covenants to Run With the Land. It is intended and agreed that the agreements, covenants and restrictions (but not the option to purchase, which is for the term stated above) set forth in this covenant shall run with the land constituting premises and shall be binding upon the Owner, its successors and assigns, for the benefit of and shall enforceable by the Authority and its successors and assigns, for a period of thirty years from the date of the deed, unless a notice of restriction is recorded by the Authority or its successors and assigns before the expiration of thirty years from the date of the deed in which case the agreements, covenants and restrictions shall continue for twenty years from the date of recording such notice of restriction. It is further agreed that the reservation or grant of the agreements, covenants and restrictions contained herein are for public and charitable purposes.

19. Appointment of Agent. The Authority may from time to time appoint and revoke the appointment of one or more agents who shall have the power to issue certificates as provided herein and to exercise and enforce the rights of the Authority as provided herein. Such appointments shall be made and revoked only by instrument in writing recorded in the Suffolk Registry of Deeds. No such instrument of appointment or revocation of appointment shall be effective unless it expressly refers to this covenant.

20. Enforcement. Without limitation on any other rights or remedies of the Authority, its successors or assigns, in the event of any rental or occupancy or sale or other transfer or conveyance of any Affordable Unit in violation of the provisions of this Covenant, the Authority shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (a) specific performance of the provisions of this Covenant;
- (b) voiding of the conveyance or rental that violates this Covenant;
- (c) money damages for charges in excess of maximum rents or maximum resale prices;
- (d) money damages for the cost of creating or obtaining other dwelling units to fulfill the need for affordable housing by low income and moderate income households;
- (e) if the violation is a sale of an Affordable Unit at a price greater than the maximum resale price as

provided herein, the Authority shall have the option to purchase the Affordable Unit on the same terms and conditions as provided herein for the exercise of its option to purchase, except that the purchase price shall be the price paid in a conveyance that complied with the provisions of this Covenant.

If any action is brought to enforce this Covenant, the prevailing party shall be entitled to actual attorneys fees and other costs of bringing the action, in addition to any other relief or remedy to which such party may be entitled.

21. Third-Party Beneficiaries. The covenants as to maximum rent and maximum resale price may be enforced by any tenant or purchaser of an Affordable Unit.

22. Inconsistent Provisions. If any provision of this covenant is inconsistent with any express provision of the deed into which this covenant is incorporated, then the express provision of the deed shall prevail.

23. Captions Not Binding. Captions for sections have been inserted for convenient reference and are not to be construed to limit or modify the provisions of this covenant.

24. Severability. If any provision of this covenant is held to be invalid by any decision of any court of competent jurisdiction in an action in which the Authority is a party, such decision shall not impair or otherwise affect any other provision of this covenant.

MEMORANDUM

DECEMBER 22, 1993

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: THOMAS O'MALLEY, ASSISTANT DIRECTOR
NEIGHBORHOOD HOUSING AND DEVELOPMENT
WILLIAM GRIFFIN, PROJECT MANAGER

SUBJECT: PARCEL RD-61 IN THE SOUTH END URBAN RENEWAL AREA,
PROJECT NO. MASS. R-56 (478 SHAWMUT AVENUE); REQUESTS
AUTHORIZATION TO RELEASE UNIT 2 FROM THE COVENANT
FOR AFFORDABLE HOUSING

SUMMARY: This memorandum requests that the Boston Redevelopment Authority (BRA) release Unit 2 in the Zebra Condominium located at 478 Shawmut Avenue from the restrictions of the Covenant for Affordable Housing that was attached as Exhibit B to the Land Disposition Agreement between the BRA and Milano Realty Company d/b/a Ferme Development Company, dated February 10, 1987, and incorporated in the Deed from the BRA to Milano Realty Corporation d/b/a Ferme Development Company, dated February 10, 1987.

On February 10, 1987 the Boston Redevelopment Authority conveyed Parcel RD-61 in the South End Urban Renewal Area (otherwise known as 478 Shawmut Avenue) to Milano Realty Company d/b/a Ferme Development Company (the "Developer"). Ferme Development Company developed ten (10) condominium units on the parcel known as 478 Shawmut Avenue. Four (4) of the ten (10) condominium units were sold as affordable units.

A Covenant for Affordable Housing ("Covenant for Affordable Housing") (see Attachment A hereto) was attached as Exhibit B to the Land Disposition Agreement between the BRA and the Developer, dated February 10, 1987 (the "LDA"), and was incorporated in the Deed from the BRA to the Developer, dated February 10, 1987 (the "Deed"). The Covenant for Affordable Housing that was attached to the LDA and incorporated in the Deed was not the final version used by the BRA today. It did not contain a provision providing for the release of the Covenant for Affordable Housing upon foreclosure.

Unit 2 located at 478 Shawmut Avenue ("Unit 2") was sold as an affordable unit. The buyer obtained a loan from the Massachusetts Housing Finance Agency ("MHFA") to purchase Unit 2. The buyer defaulted on the MHFA loan, MHFA foreclosed on the unit and on April 22, 1993 MHFA became owner of record of Unit 2.

MHFA has requested that Unit 2 be released from the Covenant for Affordable Housing to enable them to resell the unit. The BRA's current version of the Covenant for Affordable Housing (see Attachment B attached hereto) contains a provision that allows for the release of the Covenant for Affordable Housing in the event of a foreclosure. Unit 2 should be given the same treatment as that of a unit restricted by the BRA's current version of the Covenant for Affordable Housing.

It is, therefore, recommended that Unit 2 be released from the restrictions of the Covenant for Affordable Housing and that the Director be authorized to execute any and all documents necessary to effectuate such release.

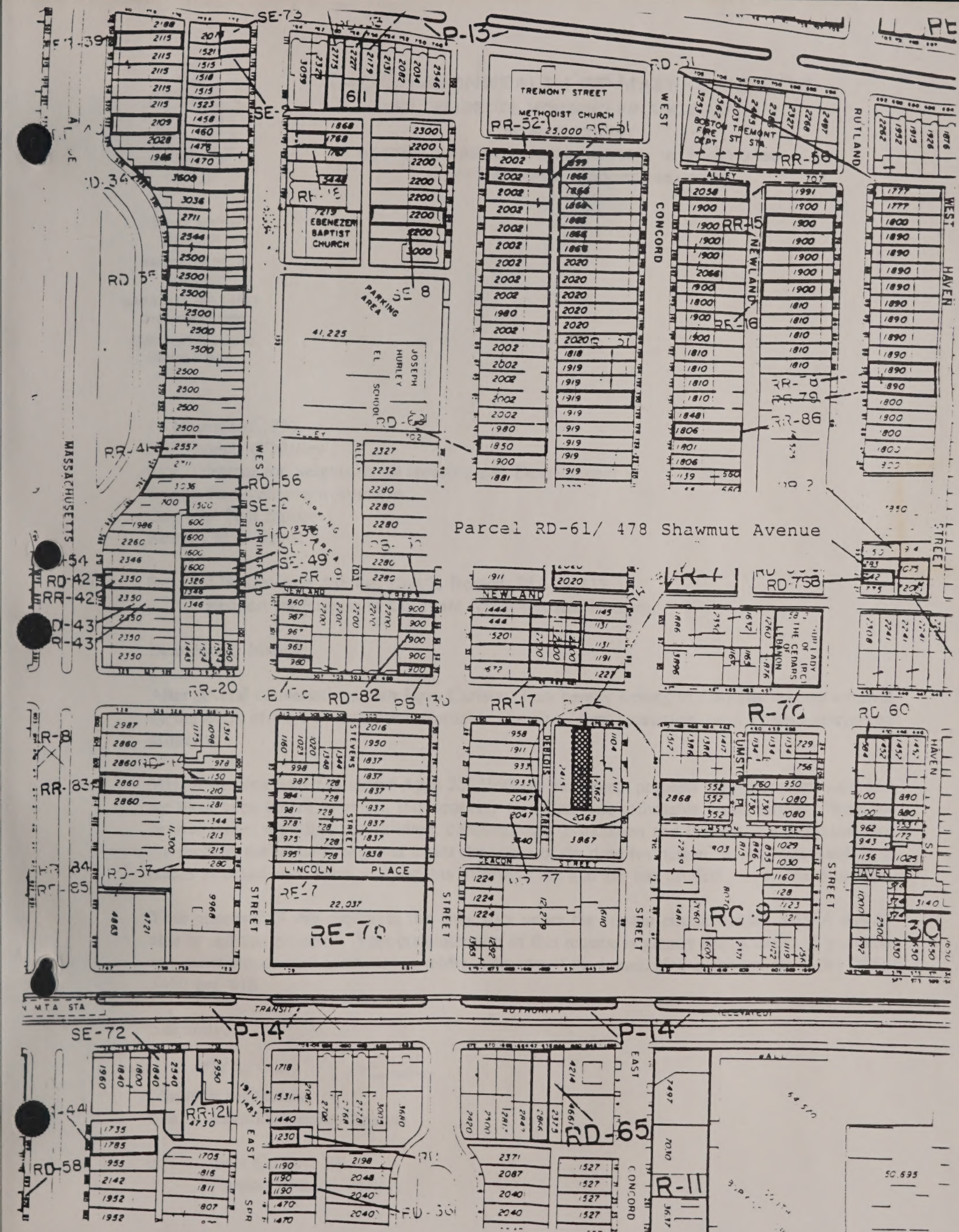
Appropriate Votes follow:

PASSED 4-0

VOTED: That Unit 2 located at 478 Shawmut Avenue is hereby released from the restrictions of the Covenant for Affordable Housing (the "Covenant for Affordable Housing") attached as Exhibit B to the Land Disposition Agreement between the Boston Redevelopment Authority (the "BRA") and Milano Realty Corporation d/b/a Ferme Development Company (the "Developer"), dated February 10, 1987, and incorporated in the Deed from the BRA to the Developer, dated February 10, 1987;

FURTHER

VOTED: That the Director is hereby authorized to execute any and all documents deemed reasonable and necessary by the Director and the Chief General Counsel to effectuate the release of Unit 2 located at 478 Shawmut Avenue from the Covenant for Affordable Housing.





THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS HOUSING FINANCE AGENCY
50 MILK STREET
BOSTON, MASSACHUSETTS 02109 • (617) 451-3480
FAX: (617) 451-0859 - TDD: (617) 451-3650

JOHN S. MARINI
Chairman

MARY L. PADULA
Vice-Chair

MARVIN M. SIFLINGER
Executive Director

ELEANOR G. WHITE
Deputy Director

16 November 1993
Mr. Thomas O'Malley
Asst. Director for Neighborhood Housing and Development
Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201

Re: 478 Shawmut Avenue, Unit 2, Boston, MA 02118
Request for Release of Covenant for Affordable Housing

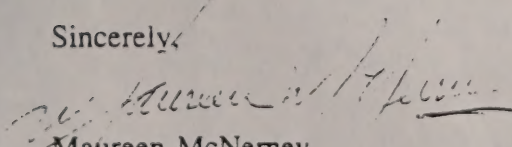
Dear Mr. O'Malley:

After several conversations with Janet Carlson, I am hereby writing to formally request removal by the BRA of the Covenant for Affordable Housing (deed restriction) on the above-referenced property.

MHFA became owner of record April 22, 1993 on the subject property through foreclosure, and we have been unable to re-sell this property to a first-time affordable home buyer. There are several issues regarding the building, condominium association and investor concentration that are prohibit the resale of this unit under the terms of the deed restriction. I have discussed these issues in detail with Janet, and she has informed me that she has briefed you on these matters.

Your approval of this request is the only way under the current circumstances MHFA will be able to sell this property. Your consideration of this request is greatly appreciated. If you have any questions or need assistance in addressing any of the issues, please contact me at (617)451-3480 ext. 418.

Sincerely,


Maureen McNerney
Senior Asset Disposition Analyst

cc: Janet Carlson, BRA
Thomas Gleason, MHFA